Case 10-31607 Doc 347 Filed 08/11/10 Entered 08/11/10 12:42:49 Desc Main Document Page 1 of 24

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

)	CHAPTER 11
Garlock Sealing Technologies, LLC, et al.,) Debtors. 1)	NOTICE OF OPPORTUNITY FOR HEARING (No Protest Notice: No Hearing Will Be Held Unless Request For Hearing is Filed)

TAKE NOTICE that Richard M. Mitchell has filed a Motion for Relief from Stay to permit Laverna Roe to proceed with a Workers' Compensation death claim against Debtor. A copy of the motion is attached hereto.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to order relief sought in the Motions, or if you want the Court to consider your views on the matter, then on or before, August 25, 2010, you or your attorney must do three (3) things:

1. File with the Court a written response <u>requesting that the Court hold a</u> <u>hearing</u> and explaining your position. File the response at:

U.S. Bankruptcy Court, 401 W. Trade St., Room 111, Charlotte, NC 28202

If you mail your request to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

2. On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:

Richard M. Mitchell, 1001 Morehead Square Drive, Suite 330, Charlotte, NC 28203

- U.S. Bankruptcy Administrator, 402 W. Trade Street, Suite 200, Charlotte, NC 28202-1669
- 3. Attend the hearing scheduled for August 26, 2010 at 9:30 a.m. at the United States Bankruptcy Court, 401 W. Trade Street, Charlotte, NC 28202.

¹ These jointly administered cases are those of the following debtors: Garlock Sealing Technologies, LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company.

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If you or your attorney do not take these steps, A HEARING WILL NOT BE HELD, and the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated: 8/11/2010

Richard M. Mitchell, NC Bar 3034 on behalf of John Ned Lipsitz, Esq. Mitchell & Culp, PLLC 1001 Morehead Square Drive, Suite 330 Charlotte, North Carolina 28203

Tel: 704-333-0630 Fax: 704-333-4975

Email: rmitchell@mitchellculp.com

John Ned Lipsitz, Esq. Lipsitz & Ponterio, LLC 135 Delaware Avenue, 5th Floor Buffalo, New York 14202

Tel: 716-849-0701 Fax: 716-849-0708

Case 10-31607	Doc 347	Filed 08/11/10	Entered 08/11/10 12:42:49	Desc Mair
		Document I	Page 3 of 24	

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA Charlotte Division

IN RE:)	
GARLOCK SEALING TECHNOLOGIES)	Case No. 10-BK-31607
LLC, et al.,)	Chapter 11
Debtors. ¹)	Jointly Administered
	,	

MOTION FOR RELIEF FROM STAY

Movant, Laverna Roe, by and through her attorney, Richard M. Mitchell, bankruptcy counsel in the above captioned action to Lipsitz & Ponterio, LLC, counsel of record, respectfully shows to the Court as follows:

- 1. On or around June 5, 2010, Debtor, Garlock Sealing Technologies LLC, commenced this proceeding by filing a voluntary petition under Chapter 11 of Title 11 of the United States Code. As such, as of June 5, 2010, Debtor has availed itself of the protections of the broad automatic stay provisions of 11 U.S.C.A. § 362(a).
- 2. On September 16, 2009, Movant's husband, Donald Roe, passed away from Lung Cancer. *See*, Death Certificate of Donald Roe, attached hereto as **EXHIBIT A**. Movant alleges that decedent's illness was caused by asbestos exposure, which occurred between 1962 and 1987, while decedent worked as an employee at the Garlock Packing Company, in Palmyra, NY, a facility owned and/or under the control of the Debtor. *See*, Social Security Administration Certification of Extract from Records for Donald Roe, attached hereto as **EXHIBIT B**; *See also*, Medical Reports for Donald Roe, attached hereto as **EXHIBIT C**.
- 3. By virtue of the aforementioned facts, Movant, as decedent's surviving spouse, may assert a Workers' Compensation Death claim against Debtor in New York State. See. New

These jointly administered cases are those of the following debtors: Garlock Sealing Technologies LLC; Garrison Litigation Management Group, Ltd.; and The Anchor Packing Company.

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York Workers' Compensation Law § 16 (West 2010). Thus, Movant is an unsecured creditor of Debtor. However, Lipsitz & Ponterio, LLC, has reason to believe that there was insurance coverage in place for this type of claim at the time the cause of action arose.

- 4. To initiate a Workers' Compensation death claim against Debtor in New York State, Movant must file a Workers' Compensation Board Form C-62 (hereinafter referred to as "Form C-62") with the New York State Workers' Compensation Board. See, Matthew Bender.

 New York State Workers' Compensation Handbook § 5.70 (LexisNexis 2010). Form C-62 functions to place an "employer and its insurer on notice of the essential facts of [a] claim." Id.
- 5. This Affidavit is made in support of Movant's motion to lift the aforementioned automatic stay in order to initiate a Workers' Compensation death claim against Debtor by filing Form C-62 with the New York State Workers' Compensation Board.
- 6. State Workers' Compensation claims are exempt from the automatic stay provisions of 11 U.S.C.A. § 362(a). See, 11 U.S.C.A. § 362(b)(4); See also, In re Mansfield Tire and Rubber Co., 660 F.2d 1108, 1114 (Sixth Circuit, 1981) (explaining, [t]he automatic stay . . . operates to hinder, delay and deprive . . . injured workers of the benefits to which they are lawfully entitled and it affects their safety")². However, out of an abundance of caution and a respect for § 362(a), Movant has chosen to submit the instant application prior to initiating such a claim.
- 7. The date of decedent's death, September 16, 2009, is considered the date of injury for purposes of a New York State Workers' Compensation death claim. *See*, New York State Workers' Compensation Law § 28 (West 2005). If decedent is not permitted to file Form-62 and initiate a Workers' Compensation claim against Debtor prior to September 16, 2011,

U.S. Bankruptcy Courts within the Fourth Circuit and the United States Fourth Circuit Court of Appeals have looked to the *Mansfield* opinion as guiding precedent. *See, New Neighborhoods, Inc. v. West Virginia Workers' Compensation Fund*, 886 F.2d 714 (Fourth Circuit, 1989); *In re McLean Trucking Co.*, 74 B.R. 820 (Bankr. W.D.N.C., 1987).

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which is the second anniversary of decedent's death, Movant's claim will be time barred, and Movant will suffer irreparable damage. *Id.*

- 8. As Movant's death claim would seek monetary contribution from Debtor's insurance carrier, and not Debtor and/or Debtor's estate, allowing Movant to pursue a Workers' Compensation claim will neither harm Debtor nor prevent Debtor's effective reorganization.
 - No prior relief similar to the relief requested herein has been requested.

WHEREFORE, Laverna Roe respectfully requests that this Court lift the automatic stay so as to allow her to file and proceed with a Workers' Compensation claim against Debtor in New York State, so that she may collect an award from Debtor's Workers' Compensation insurance provider and for such other and further relief as this Court deems just and proper.

This the day of August, 2010.

Richard M. Mitchell, NC Bar 3034 on behalf of John Ned Lipsitz, Esq. Mitchell & Culp, PLLC 1001 Morehead Square Drive, Suite 330 Charlotte, North Carolina 28203 Tel: 704-333-0630

Fax: 704-333-4975

Email: mitchell@mitchellculp.com

John Ned Lipsitz, Esq. Lipsitz & Ponterio, LLC 135 Delaware Avenue, 5th Floor Buffalo, New York 14202

Tel: 716-849-0701 Fax: 716-849-0708

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Motion for Relief from Stay and Notice of Opportunity for Hearing was served on the parties listed below by mailing a copy to each party in an envelope addressed as indicated below with proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Post Office on the 11th day of August, 2010.

U.S. Bankruptcy Administrator (via electronic filing)

Albert F. Durham
Rayburn Cooper & Durham, P.A.
1200 Carillon
227 W. Trade Street
Charlotte, North Carolina 28202
Attorney for Debtor

John R. Miller, Jr.
Rayburn Cooper & Durham, P.A.
1200 Carillon
227 W. Trade Street
Charlotte, North Carolina 28202
Attorney for Debtor

Garland S. Cassada Robinson, Bradshaw & Hinson, P.A. 101 N. Tryon Street, Suite 1900 Charlotte, North Carolina 28246 Attorney for Debtor

Official Committee of Asbestos Personal Injury Claimants c/o Richard S. Wright Hamilton, Moon Stephens Steele & Martin, PLLC 201 South College Street, Suite 2020 Charlotte, North Carolina 28244 Attorney for Creditor Committee

Official Committee of Unsecured Creditors c/o Deborah L. Fletcher Katten, Munchin Rosenman, LLP 550 S. Tryon Street, Suite 2900 Charlotte, North Carolina 28202-4213 Attorney for Official Committee of Unsecured Creditors Ashley K. Neal Rayburn Cooper & Durham, P.A. 1200 Carillon 227 W. Trade Street Charlotte, North Carolina 28202 Attorney for Debtor

Shelley Koon Abel Rayburn Cooper & Durham, P.A. 1200 Carillon 227 W. Trade Street Charlotte, North Carolina 28202 Attorney for Debtor

Jonathan C. Krisko Robinson, Bradshaw & Hinson, P.A. 101 N. Tryon Street, Suite 1900 Charlotte, North Carolina 28246 Attorney for Debtor

Official Committee of Asbestos Personal Injury Claimants c/o Travis W. Moon Hamilton, Moon Stephens Steele & Martin, PLLC 2020 Charlotte Plaza 201 South College Street Charlotte, North Carolina 28244 Attorney for Creditor Committee Richard M. Mitchell, NC Bar 3034 on behalf of John Ned Lipsitz, Esq. Mitchell & Culp, PLLC 1001 Morehead Square Drive, Suite 330 Charlotte, North Carolina 28203

Tel: 704-333-0630 Fax: 704-333-4975

Email: rmitchell@mitchellculp.com

John Ned Lipsitz, Esq. Lipsitz & Ponterio, LLC 135 Delaware Avenue, 5th Floor Buffalo, New York 14202

Tel: 716-849-0701 Fax: 716-849-0708

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SOCIAL SECURITY ADMINISTRATION

Baltimore, Maryland 21290-0300

CERTIFICATION OF EXTRACT FROM RECORDS

Pursuant to the provisions of Title 42, United States Code, Section 904, and the authority vested in me by 42 United States Code 902. I hereby certify that I have legal custody of certain records, documents, and other information established and maintained by the Social Security Administration, pursuant to Title 42, United States Code, Section 405, and that the annexed is a true extract from such records in my custody as aforesaid.

I further certify that all signatures of Social Security Administration annexed document(s) are genuine and made to the signers' official capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Social Security Administration to be affixed this day of 1000 m 1000, 2009

Kathryn E. Fox

Division Director

Division of Earnings Record Operations

Office of Central Operations

Form SSA-473 (3-96) Destroy Prior Edition

Exhibit

B

.1826 ITEMIZED STATEMENT OF EARNINGS RSION 2009.001 * * * FOR SSN

FROM: SOCIAL SECURITY ADMINISTRATION

OFFICE OF CENTRAL OPERATIONS

300 N. GREENE STREET

BALTIMORE, MARYLAND 21290-0300

LIPSITZ & PONTERIO LLC

NUMBER HOLDER NAME: DONALD F ROE

135 DELAWARE AVE

15TH FL

BUFFALO NY 14202

PERIOD REQUESTED JANUARY 1946 THRU DECEMBER 1990

YEAR JAN - MARCH APRIL -JUNE JULY - SEPT OCT - DEC TOTAL

EMPLOYER NUMBER: 16-0392420

BURTON & ELSIE COOPER 226-228 LIBERTY ST PENN YAN' NY 00000

51.10 \$51.10 1950 1951 7.00 \$7.00

EMPLOYER NUMBER: 16-0701497

GLEN I & RICHARD G COLBURN

THE TOP-KRAFT CO 71 SENCECA ST GENEVA NY 00000

1951 153.33 \$153.33

EMPLOYER NUMBER: 16-0720857

LEON GALLAGHER

RD4

PENN YAN NY 14527-0000

347.63 375.50 \$723.13 1951 881.00 1953 \$881.00

1954 828.00 1,004.00 \$1,832.00

PAGE 001

.-1826 ITEMIZED STATEMENT OF EARNINGS ASION 2009.001 * * * FOR SSN

YEAR J	AN - MARCH	APRIL -JUNE	JULY - SEPT	OCT - DEC	TOTAL
	ER NUMBER: ALLAGHER AN NY 0000				
1954		•	194.00		\$194.00
LEON G		R K O'BRIEN			
1954	•		890.75	460.57	\$1,351.32
JOS ROZ	THSCHILD & C MARKET STA				
1954				435.00	\$435.00
BARL W	ER NUMBER: & WILLIAM H WELDING SUF AL ST NY 14456-0	PLY CO			
1955	842.00	340.72	167.86		\$1,350.58
VANCE I	ER NUMBER: METAL FABRIC MBEE RD NY 14456-1				
1955		566.92	1,195.54	1,024.37	\$2,786.83
1956 1957	1,130.65 1,315.07	1,233.72 1,344.80	1,311.59 1,426.35	523.30 114.60	\$4,199.26 \$4,200.82
1958	1,606.65	1,159.55	1,468.05		\$4,234.25
1959	1,214.00	1,359.62	1,698.34	528.04	\$4,800.00
			PAGE 002		

1826 ITEMIZED STATEMENT OF EARNINGS
ASION 2009.001 * * * FOR SSN

YEAR	JAN - MARCH	APRIL -JUNE	JULY - SEPT	OCT - DEC	TOTAL
				, DEC.	241211
1960	1,370.36	1,279.63	1,531.92	618.09	\$4, 800.00
1951	1,340.73	1,440.63	1,859.82	158.82	\$4,800.00
1962	1,698.15	1,904.77	520.67	204.00	\$4,327.59
	YER NUMBER:	15-0314780			
	CK INC				
	ARK AVE			•	
NEW Y	ORK NY 10022-	-0000		•	• .
1962			745.16	1,422.17	\$2,167.33
1963	1,446.19	1,561.80	1,448.01	344.00	\$4,800.00
1964	1,531.95	1,718.70	1,549.35		\$4,800.00
1965	1,540.41	1,605.69	1,502.40	151.50	\$4,800.00
1966	1,323.07	1,650.42	1,748.21	1,591.59	\$6,313.29
1967	1,723.56	1,963.44	1,436.20	1,476.80	\$6,600.00
1968	1,793.35	1,971.83	1,718.53	2,138.83	\$7,622.54
1969	1,975.19	2,291.29	2,033.00	1,500.52	\$7,800.00
1970	2,208.05	2,541.00	2,206.36	844.59	\$7,800.00
1971	2,397.23	2,752.15	2,650.62		\$7,800.00
1972	2,856.00	2,568.00	3,024.00	552.00	\$9,000.00
1973	3,201.00	3,320.26	2,850.00	1,428.74	\$10,800.00
1974	3,395.40	2,838.00	3,439.00	3,072.00	\$12,744.40
1975	3,584.00	3,646.00	3,258.00		\$10,488.00
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1965			6.00		\$6.00
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1975				3,612.00	\$3,612.00
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.-1826 ITEMIZED STATEMENT OF EARNINGS * * * *

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YEAR J	IAN - MARCH	APRIL -JUNE	JULY - SEPT	OCT - DEC	TOTAL
NEW HOM % ESTAT 60 E 42	ES OF CHARLE	B RAYBURN			
1976	3,783.71				\$3,783.71
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1000		2 017 12	4 700 00	2 006 22	#11 E1 <i>E</i> 20
1976	2 050 12	3,817.13	4,702.83	2,996.33 4,085.49	\$11,516.29 \$16,500.00
1977	3,859.13	4,480.38	4,075.00	4,005.45	\$15,204.23
1978	•	•	_	_	\$20,257.22
1979	• •	-	-	_	\$21,126.55
1980	•	_	- ·	_	\$22,224.85
1981 1982	•	_	_	_	\$23,557.00
	-	<u>-</u>	_	<u>-</u>	\$25,167.88
1983		_	_	_	\$28,532.12
1984	-	· -	_	-	\$28,418.00
1985 1986	-	_	_	_	\$30,905.73
1987	_	-	- -	•	\$18,218.18
1301	_	-			410/210.10
AETNA I	LIFE INSURANGEMINGTON AVE			·	
1987	-	•	•	•	\$1,331.52
COLTEC % ENPRO	INDUSTRIES INDUSTRIES ARNEGIE BLVD	5TH FLOOR			
1988	•	•	•	•	\$308.86

PAGE 004

.-1826 · ITEMIZED STATEMENT OF EARNINGS
ARSION 2009.001 * * * FOR SSN * * *

YEAR JAN - MARCH APRIL -JUNE JULY - SEPT OCT - DEC TOTAL

THERE ARE NO OTHER EARNINGS RECORDED UNDER THIS SOCIAL SECURITY NUMBER FOR THE PERIOD(S) REQUESTED.

EARNINGS FOR THE YEARS AFTER 2007 MAY NOT BE SHOWN, OR ONLY PARTIALLY SHOWN, BECAUSE THEY MAY NOT YET BE ON OUR RECORDS.

PAGE 005 END



SURGICAL PATHOLOGY REPORT

PATIENT: ROE, DONALD F.

AGE/SEX: 78/M

DATE OF BIRTH: 11/26/1930

LOCATION: ENDO

MED REC NO: Yedouted ACCOUNT NO: Yedouted

DATE RECEIVED: 04/16/09 DATE OF SURGERY: 04/16/09

DOCTOR(S): TYNER, J RICHARD IGNACZAK, STEPHEN MED.REC.

TUMOR REGISTRY SPECIMEN: RESPIRATORY TRACT

CLINICAL HISTORY AND DIAGNOSIS:

Asbestos exposure, former smoker, RUL tumor with right hilar enlargement, cancer.

FINAL DIAGNOSIS:

BRONCHIAL BIOPSY OF LUNG MASS (RUL), CONSISTENT WITH LARGE CELL CARCINOMA (SEE COMMENT)

GROSS:

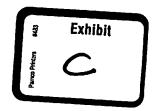
Specimen is labeled bronchial blopsy and consists of three fragments of tan tissue. On average, they measure $0.3 \times 0.1 \times 0.1$ cm and all are submitted in one cap.

MICROSCOPIC:

Section of bronchial biopsy shows three fragments of bronchial mucosa, one of which shows invasive tumor with mild stromal fibrosis and inflammatory cell reaction. The tumor is composed of large polygonal cells with relatively well delineated cell membrane. The cells have large and hyperchromatic nuclei with abundant amphophilic cytoplasm. Remaining bronchial mucosa shows surface layer of ciliated respiratory type epithelium with mild hyperplasia without atypia.

COMMENT: Histology of the bronchial biopsy is consistent with large cell carcinoma, favor poorly differentiated squamous cell carcinoma.

<signature on file> PETER LEE 04/17/09



Charles H. Albrecht, M.D. . Dana P. Hansen, M.D.

7 Ambulance Drive, Clifton Springs, NY 14432

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April 28, 2009

Stephen Ignaczak, M.D. Six Ambulance Drive Clifton Springs, New York 14432

RE: ROE, Donald

DOB: 11/26/30

Dear Doctor Ignaczak:

Thank you for referring Mr. Roe to me. As you know, he is a 78 year old gentleman who recently presented with a 1 year history of coughing and recent hemoptysis. Chest x-ray showed a right upper lobe and right hilar mass and CT scan confirmed the presence of right upper lobe mass, right hilar mass and subcarinal adenopathy. Biopsy showed large cell carcinoma. Mr. Roe was referred to you and you sent him for a brain CT scan as part of his evaluation. He was discovered to have two brain nodules, as well. You have now referred him to this department to consider palliative radiation treatments. I explained to him that typically brain metastases were treated with radiation and if allowed to progress, people become quite symptomatic very rapidly. I explained also that a course of palliative radiation treatments to his chest would probably alleviate his persistent coughing and hemoptysis and also prevent or delay development of post obstructive pneumonia. I counseled Mr. Roe regarding the risks of both treatments. Mr. Roe understands these issues and has elected to proceed with radiation treatments to the brain and to the thorax. I anticipate delivering 3500 cGy in 14 fractions to the whole brain and to the sites of gross disease in the chest. We will initiate treatments to the brain today and probably initiate treatments to the thorax later on this week. The consultation report is enclosed.

Once again, thank you for referring Mr. Roe to me. I appreciate it.

Sincerely,

Dana P. Hansen, M.D.

DPH:slw

ENCLOSURE

cc:

M. Daoud, MD J.R. Tyner, MD

We treat cancer... we care for people



FINGER LAKES HEMATOLOGY & ONCOLOGY

6 AMBULANCE DRIVE, CLIPTON SPRINGS, NEW YORK 14492 PHONE (315) 462-1472 FAX (315) 462-2639 WWW.FLHOCANCERCARE.COM

April 27, 2009

Magda Daoud, M.D. 34 Miliard Street Dundee, New York 14837

Re: Roe, Donald DOB: 11/26/1930

Dear Magda:

I had the pleasure of seeing Mr. Roe and his family in consultation for newly recognized right upper lobe cancer today. As you know, he is a 78-year-old gentleman who apparently has had a cough for a year initially felt to be secondary to ACE inhibitors and then GERD. He went to Dr. Avanzato. He was found to have polyps in his stomach. He has been back and forth to Strong this past year to have these removed. The cough persisted. He had hemoptysis on 04/13/09. A chest x-ray was done which showed a mass posterior to the right upper lobe with right hillar adenopathy, which was new compared to 03/12/08. A CT scan was done that day which showed a 3.5 x 2.3 x 2.8 centimeter mass, posterior segment of the right upper lobe, as well as a 4.5 x 5.7 x 3.8 centimeter right hilar mass and also some subcarinal lymphadenopathy. He saw Dr. Tyner on 04/16/09 and was discovered to have right upper lobe obstructing tumor. The biopsy shows this to be a non-small cell lung cancer, favor large cell/squamous. He has not had any additional hemoptysis and he is here to discuss additional management.

Other concerning findings today are a 20+ lb. weight loss over the last six weeks, poor appetite and headaches over the last week or so although he has not lost his balance or had any confusion.

PAST MEDICAL HISTORY:

- 1. Hypercholesterolemia.
- 2. Hypothyroidism which actually was initially treated with radioactive lodine and then 9 years later became hypothyroid and at the time that he presented with hyperthyroidism he was tachycardiac and he got Inderal for which he developed itching.
- 3. GERĎ.
- Gastric and colonic polyps. He had surgery on his bowel for these colonic polyps.
- 5. Cholecystectomy.
- 6. Hypertension.

He denies diabetes, coronary artery disease or CVA.

STEPHEN M. IGNACZAK, M.D. BOARD CERTIFIED HEMATOLOGY / ONCOLOGY / INTERNAL MEDICINE

BRUCE A. YIRINEC, M.D. BOARD CERTIFIED HEMATOLOGY / ONCOLOGY / INTERNAL MEDICINE

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ROE, DONALD F. Page 2

MEDICATIONS:

Levoxyi 0.15 mg dally Simvastatin 40 mg dally Avalide 150 mg dally Prilosec 20 mg dally Vicodin 5/500 mg Tessalon Perles Clarinex

ALLERGIES:

Inderel.

FAMILY HISTORY:

Unremarkable for cancer. Father died of an MI. Brother had emphysema. Mother lived to almost 100.

SOCIAL HISTORY:

He quit smoking in 1994 but smoked cigarettes 30-40 years ago and a pipe up until 1994. Drinks one drink a day. Worked at Garlock and was exposed to asbestos for 25 years. He has been married for 56 years. He has four children who are well. He lives in Dundee.

REVIEW OF SYSTEMS:

Weight is down 20 lb. Appetite is poor. Denies any pain. No chest discomfort. Some headaches behind the eyes in the last week or so. No problems with his balance. No dysphagia. No nausea, vomiting, diarrhea or constipation. No shortness of breath. No dysphag on exertion. No GI or GU symptoms. No lower extremity edema. No lumps or bumps. He does wear glasses. He has his own teeth. He is hard of hearing. He has a hearing aid.

PHYSICAL EXAMINATION:

Performance status is 1. Weight 222 lb. 5 feet 11 inches tall. Blood pressure 130/64. Pulse 76. He appears younger than his stated age. He is alert and oriented. Good insight and understanding. The neck is symmetric. He is wearing glasses. He has hearing aids. He does not have cervical, supraclavicular or axillary lymph nodes. I cannot reproduce bony pain along his spine. Lungs were clear to auscultation with slight wheeze that clears with cough. Heart is regular without S3 or gallop. Abdomen is soft throughout. I cannot appreciate any masses or reproduce any discomfort. He has no organomegaly. No evidence for ascites. Normoactive bowel sounds. Extremities without edema and no calf tenderness. Gait is normal. He is alert and oriented. Good insight and understanding. I had him walk a straight line, which he did fine. He does not have a Romberg. His coordination seems okay. He does not appear depressed.

LAB DATA:

I do not have recent blood work short of a creatinine.

CT scan and path as mentioned.

IMPRESSION:

78-year-old gentleman with right upper lobe non-small cell lung cancer who now has headaches. He has not otherwise been staged.

I spent upwards of an hour with he and his family and explained that:

ROE, DONALD F. Page 3

1. Lung cancer is very serious, life threatening and often times our efforts are palliative. I would suggest staging him including a head CT, blood work and a PET scan. If the head CT were abnormal I would pursue radiation to the brain. If he has localized disease to the chest perhaps chemoradiation cisplatin, VP-16 and radiation with curative intent although the chances for that are low and whether he could tolerate treatment I am skeptical but I certainly would like to help. If however he has metastatic disease and our efforts are essentially palliative, chemotherapy could be considered or radiation if he has hemoptysis, intractable cough, pain, etc.

The next visit will be very important and I tried to emphasize that and I think they all know the seriousness of this. Several of the family members had read up on cancer and I did provide the NCCN guidelines and Cancer.Net and gave them a pictorial review of lung cancer and tried to describe where his disease is located and why it is important to know the stage before pursuing treatment.

He and his family are coping fairly well. Hopefully we will have an answer in short order as to a plan. I would also place him on our Tumor Board and I will try to review his pathology with Dr. Lee. Again I tried to answer all of his and his family's questions.

Sincerely,

Stephen Ignaczak, M.D. Sl/tac

Xc:

J. Richard Tyner, M.D. Radiation Oncology



UNIVERSITY OF ROCHESTER/STRONG MEMORIAL HOSPITAL NEUROPATHOLOGY AND AUTOPSY PATHOLOGY

601 Elmwood Avenue Rochester, NY 14642-8626 (585-275-3202)

FINAL ANATOMIC DIAGNOSES

Yes No Autopsy Case #: 09-SAA152 Brain Removed: Brain Microscopic Evaluation: Yes No Patient Name: ROE, DONALD 09/16/2009, 18:15 Unit (Med Record) No .: Expired (Date, Time): redacted Autopsy (Date, Time): 09/18/2009; 12:30 If OB, mother's name 11/26/1930 78 YEARS Prosector: JENNIFER J. PRUTSMAN-Date of Birth/Age: PFEIFFER, PhD, PA (ASCP)^{CM} Gender/Race: WHITE MALE Neuropath Attending: Gestational age: Attending: LEON A. METLAY, M.D. NYS Tumor Registry YES (State Case) (Yes/No): ME to issue Death NO ME Case (Yes/No): NO Certificate (Yes/No):

Source of case (i.e. ward service, home, nursing home / name, other hospital/name/address):

PRIVATE AMBULATORY

Referring physicians (Physicians to get copy of report (include full names & addresses):

MAGDA DAOUD, MD, 34 MILLARD ST, DUNDEE, NY 14837-

Major Diagnoses:

ADENOSQUAMOUS CARCINOMA, RIGHT UPPER LOBE Extensive ipsilateral intrapulmonary and pleural metastasis Hemorrhagic infarct, right upper lobe

CENTRIACINAR EMPHYSEMA

ACUTE BRONCHOPNEUMONIA, LEFT LUNG Pulmonary edema, left

Minor/Incidental Diagnoses:

Pleural plaque, left

FINAL ANATOMIC DIAGNOSES

Autopsy Case #:

redacted

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Patient Name:

ROE, DONALD

Cause of Death, Immediate:

PNEUMONIA

Cause of Death, Underlying/Primary: LUNG CARCINOMA

Autopsy Limitation:

LUNGS ONLY

Embalmed(Yes/No):

Ancillary Studies:

Brown-Brenn, block 9: Weakly Gram positive cocci in pairs and chains Block 1: CK7 positive, CK20 negative, B72.3 positive, Ber-EP4 focal positive, Calretinin cytoplasm positive nuclei negative, Keratin 5/6 positive,

WT-1 negative, p63 cytoplasmic only, TTF-1 cytoplasmic only,

Napsin A negative, Mucicarmine positive intracellular

Intradepartmental Consultations:

Dr. B. Goldman, Dr. F. Li

Snomed Codes:

SNOMED CODES

M-85603, D2-F1105, D2-F110E, M-80106, D3-40215, D2-50520, D2-50101, D2-61100

Clinico-Pathologic Correlation

Major autopsy diagnoses not documented in clinical record: Pneumonia

Major clinical diagnoses not verified at autopsy:

None

Comments:

Pleural plaque was noted, consistent with the patient's history of asbestos exposure. The tumor has gross morphology that is most consistent with a primary lung carcinoma. The tumor is very poorly differentiated. Special stains show a mixture of features indicating both squamous (keratin 5/6 +, ttf-1 -) and glandular (keratin 7 +, B72.3 +, mucin +) differentiation, consistent with adenosquamous carcinoma.

Major diagnoses are defined as those which (a) likely contributed to the patient's death, (b) prompted treatment, or (c) would likely have required treatment if known. Clinical diagnoses not verified at autopsy included diseases associated with characteristic or pathognomonic anatomical findings.

Clinical Summary

Date of Admission: Not applicable Age/Sex: 78 year old Caucasian male Reason for Admission: Not applicable

History of present illness (date — diagnosis, treatment, procedure, diagnostic lab result):

4/13/2009: One year history of coughing, hemoptysis of several weeks, imaging at Soldiers and Sailors Hospital (Penn

Chest X-ray and CT scan: RUL paratracheal mass posteriorly in posterior segment 3.5 x 2.3 x 2.8 cm, R hilar mass 4.5 x 5.7 x 3.8 cm

FINAL ANATOMIC DIAGNOSES

Autopsy Case #:

redacted

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Patient Name:

ROE, DONALD

Microscopic Slide List

ORGAN	SLIDE NUMBERS
Right Upper Lobe Segmental Bronchus with Tumor	1
Right Upper Lobe Tumor (satellite)	2
Right Upper Lobe Parenchyma	3
Right Upper Lobe Hilum	4
Right Upper Lobe hemorrhagic Area	5
Right Upper Lobe and Right Lower Lobe	6
Right Lower Lobe	7
Left Upper Lobe, Inferior and Hilum	8
Left Lower Lobe	9
Left Lower Lobe	10

Date: 11/06/2009	Resident: JENNIFER PRUTSMAN-PFEIFFER, PH.D., PA (ASCP)
	Reviewing Pathologist's Electronic Signature: LEON METLAY, M.D.

The above electronic signature indicates that all work on this case was supervised and evaluated by the Pathologist. The diagnosis was rendered by the reviewing Pathologist.

FINAL ANATOMIC DIAGNOSES

Autopsy Case #:

redacted

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Patient Name:

ROE, DONALD

4/16/2009: Bronchoscopy at Clifton Springs Hospital (Clifton Springs, NY): obstructive bulging tumor at takeoff of RUL from bronchus intermedius, 3 biopsies (Clifton Springs S09-878, large cell carcinoma, favor poorly differentiated squamous cell carcinoma); narrowed airway of RUL, secretions sent for cytology (Clifton Springs NG09-81 and NG09-82, few clusters of atypical cells, no evidence of malignancy)

04/28/2009: Seen for palliative radiation treatment at Finger Lakes Radiation Oncology Center (Clifton Springs, NY) due to discovery of brain metastases

Surgical and Other Medical History:

- 1. Hypercholesterolemia
- 2. Hypothyroidism, initially treated with radioactive icdine; 9 years later became hypothyroid, presented with hyperthyroidism, tachycardic, treated with Inderal and developed itching
- 4. Duodenal polypectomies, multiple 2008 low grade dysplasia and adenomatous changes
- 5. Colectomy, partial 2002
- 6. Cholecystectomy 1194
- 7. Hypertension
- 8. Hernia repair 1951

Family History: Father died of myccardial infarction, mother lived to nearly 100 years, brother had emphysema; paternal uncle who died at age 31 of colon cancer

Social History: Married for 56 years, 4 children who are well; Tobacco - quit cigarettes 40 years ago, quit pipe in 1994; Alcohol - one drink per day; Occupation - retired maintenance supervisor for Garlock in Palmyra, NY (worked 25 years there with exposure to asbestos), boiler repairman all over the country with exposure to asbestos insulation (worked for schools and industries for 5 years prior to Garlock)

Medications: Levoxyl, Simyastatin, Avalide, Prilosec, Vicodin, Tessalon Perles, Clarinex Allergies: Inderal

Hospital Course (date - diagnosis, treatment, procedure, diagnostic lab result): Not applicable, died at home

Date and Time of Death: 09/16/2009; 18:16

Clinical Cause of Death: Multiple organ failure, metastatic lung carcinoma

Gross Examination

External Examination

Height (cm): 175.5 cm

Weight (kg or lb from chart): 222 lb, 5'1 l" from chart, 2008

BMI: 31, obese

Nutritional state: Well-nourished

Skin color: Tan-white

Liver mortis: Present bilateral trunk, upper thighs, back of body and buttocks; fixed and does not blanch to touch

Rigor mortis: Minimal in upper extremities

Jewelry: None

Tubes, lines, catheters: None

FINAL ANATOMIC DIAGNOSES

Autopsy Case #:

relacted

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Patient Name:

ROE, DONALD

Skin lesions, tattoos, etc.: 0.8 cm raised tan-white papule R groin; well healed scars: 19 cm oblique extending from below xiphoid process to R lateral abdomen, 15.5 cm transverse R lateral to mid abdomen superior to umbilicus

Other findings:

Head and Neck

Hair color/distribution: Sparse, thin grey-white head hair, male pattern baldness

Pupil diameter (mm): R: 4 mm

L: 4 mm

Eye color: Blue-green

Oral cavity/dentition: Natural teeth with some posterior fillings

Abnormalities: None

Trunk and extremities

Chest: No gross pathologic abnormalities

Abdomen: Described above

External genitalia: Circumcised penis

Groin: Described above Anus: Not assessed Back: Described above

Extremities: Bilateral purple coloration of fingernail beds, toenails with onychomycosis

Internal Examination

Incision: Modified Y

Body cavities (fluid, adhesions, etc): Extensive pleural adhesions with white firm metastatic tumor nodules, R lung, extend to pleural surface of diaphragm; less than 500 cc of serosanguineous pleural fluid on R

Respiratory System

AUTOPSY LIMITED TO LUNGS ONLY

Lung weights, unperfused (expected R: 360 - 570g, L: 325 - 480g): R: 1700 g

L: 850 g

Fixed by perfusion/immersion: Both

Pleurae: Right lung - densely adherent to parietal pleura by extensive white tan lobulated tumor nodules

Parenchyma: Right lung: 6 x 6 x 4 cm white solid central hilar tumor, surrounding main pulmonary artery and main bronchus, extands toward upper lobe surrounding segmental bronchus, thickened white-tan bronchial walls; 4 x 4 x 3 cm tan-white irregular mass, remainder of parenchyma diffusely white and firm with scattered anthracotic pigment throughout, 6 x 5 x 4 cm firm circumscribed hemorrhagic mass of RUL (lateral); Left lung: hilar region with 4 x 3 x 3 cm abscess area with firm to gritty tan-white tumor at the periphery, focal areas of consolidated parenchyma of LUL

Bronchi: Mucous plugging, dilated and elongated bronchi (bronchiectasis)

Arteries/veins: Right main artery and vein surrounded by mass at hilum (see above)

Lymph nodes: Hilar nodes firm and white

Gross photographs (list): Lungs